

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

A. G.,

Plaintiff

v.

COMMISSIONER OF SOCIAL SECURITY,

Defendant

Case No.: 3:20-cv-00365-WGC

**Order**

Re: ECF Nos. 1, 1-1

Before the court is Plaintiff's application to proceed in forma pauperis (ECF No. 1) and complaint (ECF No. 1-1).

**I. APPLICATION FOR LEAVE TO PROCEED IN FORMA PAUPERIS**

A person may be granted permission to proceed in forma pauperis (IFP) if the person "submits an affidavit that includes a statement of all assets such [person] possesses [and] that the person is unable to pay such fees or give security therefor. Such affidavit shall state the nature of the action, defense or appeal and affiant's belief that the person is entitled to redress." 28 U.S.C. § 1915(a)(1); *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) (stating that 28 U.S.C. § 1915 applies to all actions filed IFP, not just prisoner actions).

In addition, the Local Rules of Practice for the District of Nevada provide: "Any person who is unable to prepay the fees in a civil case may apply to the court for authority to proceed [IFP]. The application must be made on the form provided by the court and must include a financial affidavit disclosing the applicant's income, assets, expenses, and liabilities." LSR 1-1.

"[T]he supporting affidavits [must] state the facts as to [the] affiant's poverty with some particularity, definiteness and certainty." *U.S. v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981)

(quoting *Jefferson v. United States*, 277 F.2d 723, 725 (9th Cir. 1960)). A litigant need not “be absolutely destitute to enjoy the benefits of the statute.” *Adkins v. E.I. Du Pont de Nemours & Co.*, 335 U.S. 331, 339 (1948).

A review of the application to proceed IFP reveals Plaintiff cannot pay the filing fee; therefore, the application is granted.

## II. SCREENING

“[T]he court shall dismiss the case at any time if the court determines that-- (A) the allegation of poverty is untrue; or (B) the action or appeal-- (i) is frivolous or malicious; (ii) fails to state a claim upon which relief may be granted; or (iii) seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(A), (B)(i)-(iii).

Dismissal of a complaint for failure to state a claim upon which relief may be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and 28 U.S.C. § 1915(e)(2)(B)(ii) tracks that language. As such, when reviewing the adequacy of a complaint under this statute, the court applies the same standard as is applied under Rule 12(b)(6). *See e.g. Watison v. Carter*, 668 F.3d 1108, 1112 (9th Cir. 2012) (“The standard for determining whether a plaintiff has failed to state a claim upon which relief can be granted under § 1915(e)(2)(B)(ii) is the same as the Federal Rule of Civil Procedure 12(b)(6) standard for failure to state a claim.”). Review under Rule 12(b)(6) is essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000) (citation omitted).

The court must accept as true the allegations, construe the pleadings in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff’s favor. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969) (citations omitted). Allegations in pro se complaints are “held to less

1 stringent standards than formal pleadings drafted by lawyers[.]” *Hughes v. Rowe*, 449 U.S. 5, 9  
2 (1980) (internal quotation marks and citation omitted).

3 A complaint must contain more than a “formulaic recitation of the elements of a cause of  
4 action,” it must contain factual allegations sufficient to “raise a right to relief above the  
5 speculative level.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). “The pleading  
6 must contain something more ... than ... a statement of facts that merely creates a suspicion [of]  
7 a legally cognizable right of action.” *Id.* (citation and quotation marks omitted). At a minimum, a  
8 plaintiff should include “enough facts to state a claim to relief that is plausible on its face.” *Id.* at  
9 570; *see also Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

10 A dismissal should not be without leave to amend unless it is clear from the face of the  
11 complaint that the action is frivolous and could not be amended to state a federal claim, or the  
12 district court lacks subject matter jurisdiction over the action. *See Cato v. United States*, 70 F.3d  
13 1103, 1106 (9th Cir. 1995); *O’Loughlin v. Doe*, 920 F.2d 614, 616 (9th Cir. 1990).

14 Plaintiff’s complaint, which appears to be filed on behalf of a minor, names the  
15 Commissioner of Social Security. The complaint alleges that Plaintiff was born with  
16 gastroschisis (intestines outside the body), and has had several procedures due to this condition,  
17 but the problems persist and she may require another surgery. The complaint goes on to allege  
18 that Plaintiff has been fighting disability, and appealing decisions for four years now and that  
19 Social Security failed to review all evidence pertaining to this case. (ECF No. 1-1.)

20 Federal courts have sole jurisdiction to conduct judicial review of the Social Security  
21 Administration’s determination in this regard. *See* 42 U.S.C. § 405(g). The court will construe  
22 Plaintiff’s allegations as asserting that she has exhausted all remedies within the Social Security  
23 Administration, meaning that she received denials initially and on reconsideration, that she

1 received an adverse decision from an administrative law judge (ALJ), and that she appealed to  
2 the Appeals Council and the Appeals Council denied review. *See* 42 U.S.C. § 405(g); 20 C.F.R.  
3 §§ 404.900(a), 416.1400(a). Therefore, Plaintiff's complaint shall proceed.

### 4 **III. CONCLUSION**

- 5 (1) Plaintiff's application to proceed IFP (ECF No. 1) is **GRANTED**. Plaintiff is  
6 permitted to maintain this action without the necessity of prepayment of fees or costs  
7 or the giving of security therefor. This order granting IFP status does not extend to the  
8 issuance of subpoenas at government expense.
- 9 (2) The complaint shall **PROCEED**. The Clerk is instructed to **FILE** the complaint (ECF  
10 No. 1-1).
- 11 (3) The Clerk shall **SERVE** the Commissioner of the Social Security Administration by  
12 sending a copy of the summons and complaint by certified mail to: (1) Office of the  
13 Regional Chief Counsel, Region IX, Social Security Administration, 160 Spear St.,  
14 Suite 899, San Francisco, CA 94105-1545; and (2) the Attorney General of the  
15 United States, Department of Justice, 950 Pennsylvania Ave., N.W., Room 4400,  
16 Washington, D.C., 20530.
- 17 (4) The Clerk shall **ISSUE** a summons to the United States Attorney for the District of  
18 Nevada and deliver the summons and a copy of the complaint to the U.S. Marshal for  
19 service to the U.S. Attorney's Office at 400 S. Virginia Street, Suite 900, Reno,  
20 Nevada 89501.
- 21 (5) From now on, Plaintiff, or counsel, shall serve upon the defendant, or the defendant's  
22 attorney, a copy of every pleading, motion or other document submitted for  
23 consideration by the court. Plaintiff shall include with the original paper submitted for

1 filing a certificate stating the date that a true and correct copy of the document was  
2 mailed to defendant or defendant's counsel. The court may disregard any paper  
3 received by a district judge, magistrate judge, or clerk which fails to include a  
4 certificate of service.

5 (6) Any future filing referring to the minor Plaintiff should use the minor's initials instead  
6 of the minor's full name. LR IC 6-1(a)(2).

7 **IT IS SO ORDERED.**

8 Dated: August 18, 2020

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William G. Cobb  
United States Magistrate Judge